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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.851 OF 2002

Shayamrao Ramchandra Dhayagude
r/o. Dombal Wadi, Tal.: Mahshiras,
Dist.:Solapur ... Appellant

V/s.

The State of Maharashtra ... Respondent

Ms.D.M. Shah for Appellant
Mrs.V.R. Bhosale, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Ag. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 4, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. This Appeal impugns the judgment and order of the IV Additional Sessions Judge, Pandharpur whereby the appellant has been convicted for offences punishable under section 302, 364 of the Indian Penal Code. He has been sentenced to suffer imprisonment for life and payment of fine.

2. According to the prosecution, the incident has arisen as under:

The father of the deceased was running an iron factory where the appellant was employed on daily wages for about 4 to 5 years. The appellant was dismissed from service about 2 years prior to the incident. Many dismissed workers including the appellant were permitted to rejoin the factory. However, the appellant did not resume duty. The appellant had demanded an advance from

the owner of the factory which was refused. On his refusal, the appellant left the cabin murmuring under his breath. This incident occurred on 26.12.2000. On 2.1.2001, the victim, Saurabh and his sister Sonali were playing with their friends in front of their house. Sonali complained to the victim that Tejas and Bahubali had beaten her while playing. She and her brother therefore decided to retaliate. They were to proceed to meet Tejas and Bahubali when the appellant who had approached the spot where the children were playing, enquired as to what had happened. When told of Sonali's complaint, the appellant enticed the victim to accompany him to Bahubali and Tejas. The other children including Sonali followed them upto a certain distance and returned home. The victim did not return home that night. A complaint was lodged with the police that Saurabh was missing. The victim was found dead the next morning at around 11 am in a forest, 4 kilometres away from the house. The victim had been hit on the forehead with a stone. On the basis of the complaint lodged with them, the police arrested the accused.

3. The prosecution has examined 26 witnesses in order to prove the guilt of the appellant. PW2 and PW3 are child witnesses. PW2 Sonali is the sister of the victim. PW3 is one of the children who were playing with them on that fateful day. PW4 is Bahubali who PW2 had claimed had beaten her. PW5 is a relative of the

accused who had met him on 3.1.2001 i.e., a day after the victim and the accused were last seen together. He claims that the accused had confessed to have murdered the victim. PW6, PW7, PW8, PW9 are witnesses who have seen the appellant with the victim on the night of 2.1.2000. PW7 has seen them going towards the forest. PW10, the father of the victim is the complainant. PW11 is an attendant at the telephone booth who claims that the appellant came to the booth on 3.1.2001 at around 11.30am to make a phone call. PW12, a relative of the accused has also claimed that the appellant had confessed to him of having committed the crime. PW13, PW14, PW22, PW23, PW25 and PW26 are all the police personnel who were involved in the investigation of the crime and arrest of the accused. PW15, 18, 19, 20 and 21 are the panch witnesses who have deposed to the spot panchanama, seizure panchanama and the arrest panchanama. PW16 is the organiser of Jagran Gondhal programme, who had been approached by the accused to organise a programme. PW17 is the Doctor who conducted the postmortem examination.

4. The learned Advocate appearing for the appellant has submitted that the prosecution has miserably failed to prove that the appellant is in any way connected with the death of the victim. She submits that there is no evidence at all to prove that it was the appellant who had killed the victim. According to her, when the

entire case is based on circumstantial evidence, it is necessary for the prosecution to prove the circumstances which point solely to the guilt of the accused. In this case, she points out that except for the fact that the deceased and the appellant were last seen together and that the stones with blood stains had been recovered from the spot where the body was found, there is no other evidence on which the prosecution can rely for proving the charge. She submits that the extra judicial confessions made to PW5 and PW12 are of no evidentiary value and cannot be accepted. In these circumstances, she prays that the appeal be allowed.

5. The learned Assistant Public Prosecutor has submitted that the fact that the deceased and the appellant were last seen together is a circumstance which would certainly point to the guilt of the accused. She submits that the history of the relationship between the appellant and the complainant has been brought out in the deposition of PW10 and it shows that they were not on cordial terms. According to the learned Counsel, there is no improvement in the deposition of PW10 from the First Information Report which he had lodged. Moreover, she urges that the prosecution case should be accepted and the judgment of the trial Court should be confirmed as the stones used for assaulting the deceased have been recovered and they bear human blood stains.

6. We have perused the entire evidence recorded by the trial Court and reappreciated the evidence and other material on record. However, we are unable to draw the same inferences that have been drawn by the trial Court.

7. This entire case is based on circumstantial evidence, there being no eye witnesses to the incident. The prosecution has relied on the testimony of the child witnesses and the other witnesses who have seen the victim and the appellant together. The evidence led by the prosecution indicates that at various points of time from 7.30 pm till after 9.30 pm, the prosecution witnesses had seen the accused and the victim together. PW9 saw them close to the jungle after 9.30pm. This witness has seen the two together, last in point of time. The prosecution wants us to accept this circumstance of the victim and the appellant having been seen together before the victim’s death as one indicative of the fact that the appellant killed the deceased. PW2, the sister of the victim, has stated that between 7.30 and 8 pm on the day of the incident, she had told the victim while playing with the other children, that Bahubali and Tejas had beaten her. She has deposed that the appellant came to the spot. He asked the children where they were going when they were leaving to meet Bahubali and Tejas. She has further stated that when she told the appellant that these two persons had beat her, he asked the victim to accompany

him to the parents of Tejas and Bahubali, so that he could complain about their behaviour. She has stated that she and the other children followed the appellant and the victim upto the Banana godown. She asked the victim not to go ahead as it was dark ahead and he was barefooted. However, the appellant reassured her and the victim that no harm would befall him. The appellant then led the victim away. This witness has then stated that on returning home, she informed her father, PW10 of the incident. The deposition of PW3 essentially corroborates the testimony of PW2. He was one of the children playing with PW2 and her brother when the appellant led the victim away. The evidence of both these witnesses is believable. However, this would not automatically lead to the inference that the prosecution suggests.

8. PW4 Bahubali who PW2 has claimed beat her is a person who is 39 years of age. He has not been questioned at all about his allegedly having beaten Sonali. It is unbelievable that a person of this age would beat a child of 10 years for no rhyme or reason. However, this witness has stated that he saw the children including PW2 and PW3 following the appellant and the victim at between 7.45 and 8 pm on that day. When he closed his shop at around 8.30 pm. He learnt that the victim was not at home and people were searching for him. The children had told him that they

had walked up to the godown for bananas. This witness then went to the house of one Latif Nadaf, PW8, near the Mahadev temple. He enquired with him as to whether he had seen the victim and the appellant. He was informed that they were at the temple just before PW4 reached the temple. He has stated that he and the others continued the search for the victim. They met PW10, the father of the victim who asked him to report to the police that the victim was missing. This witness therefore, lodged the missing report with the police station at about 1 am on 3.1.2001. Accepting the veracity of the deposition of this witness would also not lead us to accept the guilt of the appellant. As aforesaid, various witnesses have deposed regarding the fact that they had seen the victim and the appellant together that night. PW9 had seen them together after 9.30 pm, near the forest. Strangely, this witness who was driving his car did not bother to stop and ask what the victim and the appellant were doing at that hour of the night near the jungle. He did not care to inform the victim's father on reaching home although they knew each other well. This witness has seen the victim and the appellant together at the last point in time. Taking the deposition of PW2, PW3, PW4 and PW9 together, we are unable to draw any other inference but that the victim and the appellant were last seen together near the forest after 9.30pm on 2.1.2000.

9. Another circumstance which the prosecution relies on is that the appellant had confessed to committing the crime to PW5 and PW12. PW5, Jaywant, claimed to be a relative of the Appellant and supplied milk to persons residing in the same village as the victim. He has stated that on 3.1.2001 when he was driving his tempo to supply milk to his customers in Baramati he met the appellant on a bridge on Neera river. This witness asked the appellant his whereabouts during the last night as the police were searching for him. This witness then has deposed that the appellant told him that he had murdered the son of PW10. The witness then proceeded towards Baramati. He then has stated that on 4.1.2001, he received a call from one Satish Dhaigude and Manik Bandhe who informed him that the appellant had met them in Mumbai and had told them that he had killed the son of PW10. These persons then produced the appellant before the police station in Mumbai. Both these persons are relatives of the appellant. Significantly, this person did not inform the police immediately after being told by the appellant himself that he had committed a crime. Satish Dhaigude has been examined as PW12. This witness has stated that he and Manik telephoned to one Shivaji Dhaigude, their cousin, (and not Jaywant, PW5) informing him of the appellant’s confession to them. He has deposed that thereafter they informed the Pant Nagar Police station in Mumbai and the appellant was arrested. Whether any

reliance can be placed on the extra judicial confessions made to these witnesses is a matter which will have to be considered. Despite the confession made by the appellant to PW5 on 3.1.2001, he did not bother to complain to the police nor did he inform the father of the victim or anybody else. It was only on 4.1.2001 when he claims PW12 and Manik informed him of the confession of the appellant to have committed the crime that he suggested that the appellant should be handed over to the police. In our opinion, this conduct on the part of PW5 is unnatural and, therefore, it would be difficult to rely on the extra judicial confession which he claims the appellant made to him. The purported confession made to PW12 led to the appellant's arrest. The prosecution has not established that the relations between the Appellant and these two witnesses were so close that he would have naturally confessed to them. Therefore, in our opinion, not much reliance need be placed on these extra judicial confessions.

10. The next circumstance which the prosecution relies on is the recovery of stones with blood stains on them, near the body. The body of the victim was found in the forest on the next day i.e., on 3.1.2001. The spot panchanama indicates that two stones with blood stains on them were found near the body. These two stones were sent to the chemical analyser and it is found that the blood stains on them are of human blood.

However, the grouping of the blood stains proved to be inconclusive. In fact, the blood stained clothes of the appellant which were seized also did not give any positive result in respect of the grouping of the blood. The analysis of the blood group of the victim was also inconclusive. Therefore, there is nothing on record to connect the appellant to the crime. There is no evidence on record that the blood stains on the stones were those of the victim. Nor is there any evidence on record to show that it was the appellant who had used the stones to murder the victim. All these factors which the prosecution relies on do not lead to the only and irrebuttable conclusion that it is the appellant who had committed the crime.

11. Another circumstance relied on by the prosecution is that a telephone call was by the appellant to PW10, the father of the victim on 3.1.2001 at around 11.30 am. However, merely because the appellant had in fact telephoned to PW10 on 3.1.2001 one cannot draw the conclusion that it was he who had done away with Saurabh. Thus, although the death of Saurabh was homicidal in nature, we are unable to accept the theory of prosecution that it is the appellant who had caused his death. There is a missing link in the chain of circumstances relied on by the prosecution and, therefore, we are unable to arrive at the sole hypothesis that it is the appellant who had committed

the crime. There is a lack of evidence connecting the appellant to the homicidal death of the victim.

12. In the result, the appeal is allowed. The appellant is acquitted. He shall be released forthwith, if not otherwise required in law.

13. The fees of the advocates appearing for both the appellant and the State is quantified at Rs.2,000/-.